



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DENIED: July 13, 2009

CBCA 1532

FRANCES SPICER,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Frances A. Spicer, pro se, Lakewood, CO, Appellant.

Kathleen K. Barksdale, Office of Regional Counsel, General Services Administration, Philadelphia, PA, counsel for Respondent.

Before Board Judges **STEEL**, **DRUMMOND** and **KULLBERG**.

STEEL, Board Judge.

Ms. Frances Spicer (appellant) sought to be reimbursed the purchase price of a vehicle she acquired at a General Services Administration (GSA) auction, as well as the cost of repairing the vehicle and compensation for pain and suffering. A GSA contracting officer denied her claim. Appellant appealed the contracting officer's final decision. Appellant maintains that she is entitled to return the vehicle to GSA and requests that she be reimbursed the purchase price of \$5020. Additionally, she requests that costs for gas, air travel, hotel accommodations, taxes, fees, and repairs already performed on the vehicle be paid to her. She also requests \$1000 as compensation for pain and suffering. In support of her claim, she supplied bills in the amount of \$1137.77 for repairs performed on the vehicle, as well as

estimates in the amount of \$4786.61 for necessary repairs not yet performed. GSA now moves for summary relief and requests that the appeal be denied or dismissed.

Background

On or about December 9, 2008, GSA conducted an Internet auction for the sale of a 2004 Chevrolet Impala, Vehicle Information Number 2G1WF52K349399611, with mileage estimated at 61,400. Appeal File, Exhibit 3.¹ The vehicle information, including a photograph, was shown on the GSA auction website. The vehicle description included make, model, year, and a list of equipment. The description also included a statement, appearing in all capital letters, that repairs were required and that the vehicle was “inoperable, needs to be towed, needs new battery, parts may be missing and other repairs may be required.” *Id.*

The Online Sale Terms and Conditions which appeared on the GSA auction website cautioned that the condition of the property was not warranted but that “[d]eficiencies, when known, have been indicated in the property descriptions. However, absence of any indicated deficiencies does not mean that none exists.” Exhibit 4. Despite the fact that the condition of the vehicle was not warranted and that the terms and conditions issued a number of warnings to prospective bidders, appellant alleges that the car was misdescribed, or that the full extent of damage was not disclosed.

The Online Sale Terms and Conditions included language stating that photographs of the vehicle may not depict an exact representation of the bid item(s) and should not be relied upon in place of a written item description or as substitute for physical inspection. Exhibit 4. Bidders were “invited, urged and cautioned to inspect the property prior to bidding.” *Id.* Furthermore, bidders were advised to contact the custodian for inspection dates at the Federal Bureau of Investigation in Richmond, Virginia, where the vehicle was located. Exhibit 3. In these clear terms, Ms. Spicer was advised to inspect the vehicle prior to bidding, but she did not heed this advice.

Appellant was the high bidder at the auction and was awarded the vehicle at a cost of \$5020 on December 9, 2008, under contract number GS03F09FBE0790. Exhibit 5.

Appellant was awarded the vehicle on December 9, 2008. Exhibit 5. On December 23, 2008, appellant first alleged a vehicle misdescription to a manager within the GSA Property Management Division. Exhibit 26. In accordance with the online sale terms and conditions, appellant was informed that she was not authorized to return the vehicle since she had made repairs to the vehicle. Exhibit 22.

¹ All exhibits are found in the appeal file, unless otherwise noted.

Discussion

Summary relief is only appropriate where there is no genuine issue as to any material fact and the moving party is entitled to relief as a matter of law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). The moving party shoulders the burden of demonstrating that no genuine issue of material fact exists. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Any doubt as to whether summary relief is appropriate is to be resolved against the moving party. *Id.* at 325. For the purpose of deciding this motion, we assume that the facts alleged by appellant are accurate.

GSA auctions are governed by the rules set forth in the terms and conditions accompanying the solicitation. Bidders, like appellant, must agree to these rules to participate in the auction. In this manner, the rules become binding on all bidders. *Darren R. Gentilquore v. General Services Administration*, GSBCA 16705, 05-2 BCA ¶ 33,117. By registering and submitting a bid, appellant agreed to the terms and conditions of the sale.

Pursuant to the Sale of Government Property Online Sale Terms and Conditions, a misdescription occurs when there exists “a gross omission regarding the functionality of an item, failure to cite major missing parts, and/or restrictions with regards to its use after purchase or removal.” Exhibit 4. In the event of a true misdescription, the terms and conditions clearly set forth the remedy available to appellant: a refund limited to the purchase price if the purchaser notifies the contracting officer within fifteen days of award or removal of the property from the government location. Upon such notification, the property must be returned to the Government at the successful bidder’s expense. The property must be maintained “in the purchased condition until it is returned.” Exhibit 5; *see also John Glasure v. General Services Administration*, GSBCA 16046, 03-2 BCA ¶ 32,284.

In her untimely January 2, 2009, letter of misdescription to the GSA, appellant maintained that the agency failed to disclose known mechanical problems, asserting that “there is a hole in the trunk of the car, and a hole or something on the dash covering this, that it is not possible to remove without replacing the top dash piece. I also allege that the hubcaps are rusted/broken, and this was not disclosed.” Exhibit 10. However, as this Board found in *Steven A. Groshong v. General Services Administration*, CBCA 1324, 09-1 BCA ¶ 31,104, “brevity of description is not the same as misdescription.” While repairs may be required on the vehicle Ms. Spicer purchased, there was no gross omission regarding functionality, failure to cite major missing parts, or restrictions with regard to its use.

By failing to notify the contracting officer in writing of the alleged misdescription within the fifteen-day period, by authorizing various repairs to be made on the vehicle, and by driving the vehicle for 4600 miles, Ms. Spicer rendered the only remedy available to her null and void. *See generally Iristine Evans-Roddy v. General Services Administration*,

GSBCA 14882, 99-2 BCA ¶ 30,416. As such, “[r]epair of the property and assessment of damages against the Government is not an option.” *Patrick C. Sullivan v. General Services Administration*, CBCA 936, 08-1 BCA ¶ 33,820; *see also Gavin L. Rouse v. General Services Administration*, GSBCA 15993, 03-1 BCA ¶ 32,210; *Dorothy Hallquist v. General Services Administration*, GSBCA 15368, 01-1 BCA ¶ 31,397.

Although appellant alleges that the GSA property custodian informed her that the vehicle was in excellent condition and generally well maintained, no relief is available to a buyer even if the buyer can prove that she was misled by site personnel as to the actual condition of the property. *Groshong*. The Board looks to the terms and conditions on this issue and notes that:

Any oral statement or representation by any representative of the Government, changing or supplementing the offering or contract or any condition thereof, is unauthorized and shall confer no right upon the bidder or purchaser. Further, no interpretation of any provision of the contract, including applicable performance requirements, shall be binding on the government unless furnished or agreed to, in writing by the Contracting Officer or his designated representative.

Exhibit 4. Thus, even if true as alleged, the statements made by the GSA property custodian to the effect that the car was in perfect running condition are not binding on GSA and provide no basis for relief to appellant. *Larry J. McKinney v. General Services Administration*, GSBCA 16720, 05-2 BCA ¶ 33,119.

Appellant’s complaint does not implicate the accuracy of the vehicle description, but rather, the condition of the vehicle she bought. *Claude Kobasic v. General Services Administration*, GSBCA 16456, 05-1 BCA ¶ 32,833 (2004); *see also Danny R. Mitchell v. General Services Administration*, GSBCA 16209, 04-1 BCA ¶ 32,551, *reconsideration denied*, 04-1 BCA ¶ 32,588. Appellant alleges that the vehicle is essentially inoperable and unsafe to drive (although she drove it for 4600 miles). However, although GSA warrants that the items purchased are the items offered for sale, the Government does not warrant the merchantability of the property or its purpose and it specifically refuses to provide a warranty of condition. Property offered for sale is sold “as is.” *Chris Ward v. General Services Administration*, GSBCA 16473, 05-1 BCA ¶ 32,881; *Coleridge D. Henri v. General Services Administration*, GSBCA 13991, 97-2 BCA ¶ 29,187, at 145,161. The terms and conditions state that “[t]he purchaser is not entitled to any payment for loss of profit or any other money damages – special, direct, indirect, or consequential.” The buyer assumes the risk of purchasing a used vehicle through the auction process. *Ward*, 05-1 BCA at 32,881.

Decision

Respondent's motion for summary relief is granted. The appeal is **DENIED**.

CANDIDA S. STEEL
Board Judge

We Concur:

JEROME M. DRUMMOND
Board Judge

H. CHUCK KULLBERG
Board Judge